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REFERENCE TITLE: **workers' compensation; infectious exposures**

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

## **HB 2399**

Introduced by  
Representative Wagner

**AN ACT**

**AMENDING SECTIONS 23-1043.02 AND 23-1043.03, ARIZONA REVISED STATUTES;  
RELATING TO WORKERS' COMPENSATION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-1043.02, Arizona Revised Statutes, is amended to  
3 read:

4 23-1043.02. Human immunodeficiency virus; establishing  
5 exposure; definition

6 A. A claim for a condition, infection, disease or disability involving  
7 or related to the human immunodeficiency virus or acquired immune deficiency  
8 syndrome shall include the occurrence of a significant exposure as defined in  
9 this section and, except as provided in subsection B of this section, shall  
10 be processed and determined under ~~the provisions of~~ this chapter and  
11 applicable principles of law.

12 B. Notwithstanding any other law, an employee who satisfies the  
13 following conditions presents a prima facie claim for a condition, infection,  
14 disease or disability involving or related to the human immunodeficiency  
15 virus or acquired immune deficiency syndrome if the medical evidence shows to  
16 a reasonable degree of medical probability that the employee sustained a  
17 significant exposure within the meaning of this section:

18 1. The employee's regular course of employment involves handling ~~OF~~ or  
19 exposure to blood or body fluids, other than tears, saliva or perspiration,  
20 including health care providers as defined in ~~title 36, chapter 6, article 4~~  
21 SECTION 36-661, forensic laboratory workers, fire fighters, law enforcement  
22 officers, emergency medical technicians, paramedics and correctional  
23 officers.

24 2. Within ten calendar days after a possible significant exposure  
25 which arises out of and in the course of his employment, the employee reports  
26 in writing to the employer the details of the exposure. The employer shall  
27 notify its insurance carrier or claims processor of the report. Failure of  
28 the employer to notify the insurance carrier is not a defense to a claim by  
29 the employee.

30 3. The employee has blood drawn within ten days after the possible  
31 significant exposure, the blood is tested for the human immunodeficiency  
32 virus by antibody testing within thirty days after the exposure and the test  
33 results are negative.

34 4. The employee is tested or diagnosed, according to clinical  
35 standards established by the centers for disease control of the United States  
36 public health service, as positive for the presence of the human  
37 immunodeficiency virus within eighteen months after the date of the possible  
38 significant exposure.

39 C. ALL TESTING AND PROPHYLACTIC TREATMENT DESCRIBED IN SUBSECTION B OF  
40 THIS SECTION SHALL QUALIFY AS A CLAIM UNDER THIS CHAPTER.

41 ~~C.~~ D. On presentation or showing of a prima facie claim under this  
42 section, the employer may produce specific, relevant and probative evidence  
43 to dispute the underlying facts, to contest whether the exposure was  
44 significant as defined in this section, or to establish an alternative

1 significant exposure involving the presence of the human immunodeficiency  
2 virus.

3 ~~D.~~ E. A person alleged to be a source of a significant exposure shall  
4 not be compelled by subpoena or other court order to release confidential  
5 human immunodeficiency virus related information either by document or by  
6 oral testimony. Evidence of the alleged source's human immunodeficiency  
7 virus status may be introduced by either party if the alleged source  
8 knowingly and willingly consents to the release of that information.

9 ~~E.~~ F. Notwithstanding title 36, chapter 6, article 4, medical  
10 information regarding the employee obtained by a physician or surgeon is  
11 subject to the provisions of section 23-908, subsection C.

12 ~~F.~~ G. The commission by rule shall prescribe requirements and forms  
13 regarding employee notification of the requirements of this section and the  
14 proper documentation of a significant exposure.

15 ~~G.~~ H. For the purposes of this section, "significant exposure" means  
16 contact of an employee's ruptured or broken skin or mucous membrane with a  
17 person's blood or body fluids, other than tears, saliva or perspiration, of a  
18 magnitude that the centers for disease control have epidemiologically  
19 demonstrated can result in transmission of the human immunodeficiency  
20 virus. For purposes of filing a claim under this section, significant  
21 exposure does not include sexual activity or illegal drug use.

22 Sec. 2. Section 23-1043.03, Arizona Revised Statutes, is amended to  
23 read:

24 23-1043.03. Hepatitis C; establishing exposure; definition

25 A. A claim for a condition, infection, disease or disability involving  
26 or related to hepatitis C shall include the occurrence of a significant  
27 exposure as defined in this section and, except as provided in subsection B  
28 of this section, shall be processed and determined under this chapter and  
29 applicable principles of law.

30 B. Notwithstanding any other law, an employee who satisfies the  
31 following conditions presents a prima facie claim for a condition, infection,  
32 disease or disability involving or related to hepatitis C if the medical  
33 evidence shows to a reasonable degree of medical probability that the  
34 employee sustained a significant exposure within the meaning of this section:

35 1. The employee's regular course of employment involves handling of or  
36 exposure to blood or body fluids, other than tears, saliva or perspiration,  
37 including health care providers as defined in section 36-661, forensic  
38 laboratory workers, fire fighters, law enforcement officers, emergency  
39 medical technicians, paramedics and correctional officers.

40 2. Within ten calendar days after a possible significant exposure that  
41 arises out of and in the course of his employment, the employee reports in  
42 writing to the employer the details of the exposure. The employer shall  
43 notify its insurance carrier or claims processor of the report. Failure of  
44 the employer to notify the insurance carrier is not a defense to a claim by  
45 the employee.

1           3. The employee has blood drawn within ten days after the possible  
2 significant exposure, the blood is tested for hepatitis C by antibody testing  
3 within thirty days after the exposure and the test results are negative.

4           4. The employee is tested or diagnosed, according to clinical  
5 standards established by the centers for disease control of the United States  
6 public health service, as positive for the presence of hepatitis C within  
7 seven months after the date of the possible significant exposure.

8           C. ALL TESTING AND PROPHYLACTIC TREATMENT DESCRIBED IN SUBSECTION B OF  
9 THIS SECTION SHALL QUALIFY AS A CLAIM UNDER THIS CHAPTER.

10          ~~C.~~ D. On presentation or showing of a prima facie claim under this  
11 section, the employer may produce specific, relevant and probative evidence  
12 to dispute the underlying facts, to contest whether the exposure was  
13 significant as defined in this section, or to establish an alternative  
14 significant exposure involving the presence of hepatitis C.

15          ~~D.~~ E. A person alleged to be a source of a significant exposure shall  
16 not be compelled by subpoena or other court order to release confidential  
17 hepatitis C related information either by document or by oral  
18 testimony. Evidence of the alleged source's hepatitis C status may be  
19 introduced by either party if the alleged source knowingly and willingly  
20 consents to the release of that information.

21          ~~E.~~ F. Notwithstanding title 36, chapter 6, article 4, medical  
22 information regarding the employee obtained by a physician or surgeon is  
23 subject to section 23-908, subsection C.

24          ~~F.~~ G. The commission by rule shall prescribe requirements and forms  
25 regarding employee notification of the requirements of this section and the  
26 proper documentation of a significant exposure.

27          ~~G.~~ H. For the purposes of this section, "significant exposure" means  
28 contact of an employee's ruptured or broken skin or mucous membrane or other  
29 significant unbroken surface area with a person's blood or body fluids, other  
30 than tears, saliva or perspiration, of a magnitude that the centers for  
31 disease control have epidemiologically demonstrated can result in  
32 transmission of hepatitis C. For purposes of filing a claim under this  
33 section, significant exposure does not include sexual activity or illegal  
34 drug use.